MOUNTAINEERING CLUB OF ALASKA, INC.

IBLA 75-213 Decided March 19, 1975

Appeal from a decision of the Bureau of Land Management denying a petition to classify land for lease under the Recreation and Public Purposes Act A-064053.

Affirmed.

1. Recreation and Public Purposes Act

   The filing of a petition-application under the Recreation and Public Purposes Act does not segregate the land applied for or preclude consideration of later-filed applications unless and until the land is finally classified for the purpose applied for under the Act.

2. State Selections

   The allowance of a state selection application furthers the discharge of the federal obligation to fulfill the State's statutory entitlement and, generally, it will be preferred in the public interest over the discretionary application of one who does not have an entitlement of equal dignity.

3. Administrative Procedure: Generally -- Recreation and Public Purposes Act -- State Selections

   The denial of a petition for classification and the rejection of an application under the Recreation and Public Purposes Act for a lease of lands which have been withdrawn and which are also subject to

a state selection application which, under the terms of the withdrawal order, may be allowed, does not violate the tenets of due process because the disposition of the petition-application is at the discretion of the Secretary, and the petitioner-applicant has no vested right protected by Constitutional guarantees or by the Administrative Procedure Act.

Appearances: Thomas E. Meacham, Esq., Ely, Guess & Rudd, Anchorage, Alaska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

The Mountaineering Club of Alaska, Inc., filed its petition for classification and application to lease certain lands pursuant to the Recreation and Public Purposes Act of June 14, 1926, as amended, 43 U.S.C. §§ 869 et seq. (1970). Appellant desired to construct a chain of shelter cabins in the Chugach Mountains. Although the application was filed in 1965, various administrative requirements and conflicts prevented the Bureau of Land Management from granting the lease, although a proposed classification favorable to the application was drafted, an appraisal report was accomplished, and efforts were made by Bureau personnel to resolve the conflicts so that the lease could be issued to appellant. Despite these efforts, the series of legislative and administrative events which have influenced the availability of public lands in Alaska in recent years operated to preclude the granting of the lease.

One of the conflicts was the application by the State of Alaska to select the entire township in which the subject land is situated (State selection application A-067449). Public Land Order 5186, dated March 15, 1972, withdrew this land from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, "but not from selection by the State of Alaska under the Alaska Statehood Act, 72 Stat. 339." (Emphasis supplied). The order was made subject to "valid existing rights."

Accordingly, by its decision of September 25, 1974, the Bureau's Alaska State Office denied appellant's petition for classification and rejected its application to lease.

Appellant asserts that the filing of its petition-application operated to segregate the subject land from the public domain, and

it contends that as long as the petition-application was pending on the land records, and until it was accepted or rejected, the State of Alaska could not later file a selection application which would affect the appellant's petition-application. It is argued further that it is a denial of substantive due process to decide that because of the State's later application the appellant's earlier application should be denied, and that because the appellant's application was filed first, the State's selection has no bearing on the lands involved until appellant's application has been finally granted or rejected on its own merits, independent of any consideration of the state selection application. Finally, it is alleged that the Bureau's decision constitutes an abuse of its discretion.

[1] The arguments advanced by appellant are in error in every particular. The filing of a petition-application does not segregate the land from the public domain or preclude favorable consideration of later-filed applications unless and until the land is finally classified as suitable for disposition pursuant to the Recreation and Public Purposes Act. 43 CFR 2091.3-2, 43 CFR 2741.2(d). No such classification order may issue until and unless it is determined that the land is "not needed for any other public purpose or is not more valuable and suitable for some other use . . ." 43 CFR 2741.2(a). The citations offered by appellant in support of its argument are inapposite, in that they refer to other kinds of cases which involved the actual vesting of prior rights; e.g., allowed homestead entries. No prior right or superior interest is invested in one who files a petition-application under the Act. The disposition of any such petition-application is at the discretion of the Secretary, 43 U.S.C. § 869 (1970). One who is duly delegated to exercise the authority of the Secretary in this regard does not abuse his discretion by denying a petition and rejecting an application filed under the Act in favor of a later filed state selection application, particularly where the Secretary has withdrawn the land with express provision for the selection of the land by the State.

[2] By contrast, the selection of lands by a state pursuant to 43 CFR Part 2620 does have segregative effect. 43 CFR 2091.6-4. The allowance of a state selection goes to the discharge of the federal obligation to fulfill the state's statutory entitlement, and generally it will be preferred in the public interest over the prior-filed discretionary application of one who does not have an entitlement of equal dignity. See Nelson A. Gerttula,

64 I.D. 225, 228-9 (1957), aff'd. Gerttula v. Udall, 309 F. 2d 653 (9th Cir. 1962); Julian Lindsay, State of California, Sacramento 063368 (August 4, 1966), approved by the Assistant Secretary; Isabel Gunnerson, State of Nevada, A-26952 (February 11, 1955).

[3] Finally, the rejection of a petition-application for lease under the Recreation and Public Purposes Act in these circumstances does not constitute a denial of due process because disposition of the petition-application is discretionary and the appellant had no vested right protected by Constitutional guarantees or by the Administrative Procedure Act.

Therefore, pursuant to the authority vested in the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Joseph W. Goss
Administrative Judge

Anne Poindexter Lewis
Administrative Judge